

Selected Documents from Claim File

Claim No. LRF-2000-XXXX-XX



State of Utah

DEPARTMENT OF COMMERCE DIVISION OF OCCUPATIONAL & PROFESSIONAL LICENSING

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MEMORANDUM

To: Lien Recovery Fund Advisory Board
From: W. Earl Webster, Lien Recovery Fund Program Coordinator
Date: May 11, 2000
Subject: **Claim for Refund by Albert R. Ashworth (a homeowner) for Money Paid to J & J Mill and Lumber Co. (a supplier) to Release a Lien**

In February I received a letter from Albert Ashworth. Mr. Ashworth is convinced he was wrongfully coerced into paying a mechanics' lien on his home and has requested that the Fund either pay him or pay the lien holder who would then pay Mr. Ashworth. In an effort to defuse what could easily become a public relations nightmare, I approached Director Bowen regarding how he wanted the issue handled. He instructed me to convert the file into a claim and present it to the Board for payment. Because the database will not process claims by homeowners, I am presenting the claim in memorandum format.

Please review this summary and attached documents. Your recommendations as to how to settle this matter are anxiously awaited.

The Parties

Because of the unusual nature of this claim I will be referring to the parties by name not by what position they occupy. The parties and the positions they occupy are as follows:

- Albert Ashworth—homeowner and claimant
- J & J Mill and Lumber Co.—supplier and lien holder
- Terry Wade—attorney for J & J Mill and Lumber Co.
- Randy Larson Masonry Contractor—the original contractor and nonpaying party

The Attachments

Attached with this memorandum are copies of all the documents we have received relative to this claim. They are as follows:

- Exhibit A: A summary prepared by Kathie of the various telephone conversations she has had with Mr. Ashworth and Mr. Wade regarding this matter.
- Exhibit B: Mr. Ashworth's letter requesting the money be refund and the supporting documents he alleges prove compliance with the Act.
- Exhibit C: Mr. Wade's summary of the situation.

The Facts (as currently known)

As best we have been able to determine, the facts are as follows:

- Mr. Ashworth entered into a written contract with Randy Larson Masonry Contractor for construction of a brick fence along the rear of Mr. Ashworth's property. That contract was signed on May 17, 1995.
- Randy Larson Masonry Contractor was licensed from June 30, 1993 to July 31, 1997.
- Sometime after May 17, 1995, Mr. Ashworth and Randy Larson Masonry Contractor agreed to a contract for the construction of brick fences along the sides of Mr. Ashworth's property. All parties agree this contract was oral and was not reduced to writing. Mr. Wade believes the contract was separate from the written contract for the rear of the property. Mr. Ashworth does not know whether this contract was a separate contract or an oral modification to the existing written contract.
- On September 7, 1995, Mr. Ashworth paid Randy Larson Masonry Contractor in full for both contracts.
- Sometime after September 7, 1995, J & J Mill and Lumber Co. filed a lien on Mr. Ashworth's property to secure payment for materials used in the construction of the side fences (the second contract).
- Upon meeting with Mr. Wade, Mr. Ashworth paid \$1,000 to have the lien released.
- Since paying J & J Mill and Lumber Co., Mr. Ashworth has repeatedly demanded that Mr. Wade refund the money because, in Mr. Ashworth's opinion, the work should have been covered by the Lien Restriction provisions of the Act.

This is only a brief summary of the timeline. I strongly recommend you read the exhibits carefully and thoroughly. Some of the information is difficult to interpret and I expect different Board members will have different understandings of the available documentation. Sorting out what really happened will likely be more difficult than determining what to do with the claim.

Potential Bars to Payment

During discussion of this matter with Director Bowen, Ray Walker, Division Counsel, and I identified several issues that appear to bar the Fund from paying Mr. Ashworth's claim. Director

Bowen instructed me to make the Board aware of the potential bars and ask the Board to explore ways the bars can be eliminate or avoided for this case. The potential bars are as follows:

- Mr. Ashworth is not and never has been registered with the Fund.
- Mr. Ashworth has provided no evidence that he performed qualified services for Randy Larson Masonry Contractors.
- Mr. Ashworth has not provided a judgement or a ruling by the Labor Commission establishing that he was an employee of Randy Larson Masonry Contractors.
- We have received no evidence indicating any party filed civil action against Randy Larson Masonry Contractors within 180 days of the last date of qualified service or that Randy Larson Masonry Contractors filed bankruptcy within that time frame.
- We have not received a judgement against Randy Larson Masonry Contractors.
- We have not received any evidence that Mr. Ashworth has made reasonable effort to collect on any judgement against Randy Larson Masonry Contractors.
- Mr. Larson has not paid the claim-processing fee.

I recognize that this claim appears fatally flawed. Further, I do not want anyone to get the impression I want to pay any claim that does not meet the requirements of the Act. However, Director Bowen has asked that the Board exert all its talent to determine whether the Fund can, in any way, possibly pay this claim.

cc: Albert Ashworth

Ex. A

Memorandum

To: Earl Webster, Program Manager
CC: File, Gary Bowen
From: Kathie Schwab, Program Secretary
Date: 03/06/00
Re: Albert Ashworth Conversations

On December 3, 1999, I received a telephone call from Homeowner Albert Ashworth. He explained that he had paid for work done on his property – a fence I think. The contractor had not paid the supplier and a lien was placed on his home. I asked when the work was done. It was completed in the fall of 1995. He explained that the contractor, Randy Larsen, was currently in prison. Mr. Ashworth said that a local attorney had threatened foreclosure on his home and had placed a lien for his clients Sunroc dba J & J Mill & Lumber on the property. Mr. Ashworth asked me to talk with the attorney. He wanted me to explain the LRF statute to the attorney because the attorney obviously did not know about it.

The attorney that Mr. Ashworth was referring to is Terry Wade of Snow Nuffer Engstrom Drake Wade & Smart in St. George. Mr. Wade has filed several claims that have been paid. Mr. Wade is aware of the fund requirements. I believe that the Ashworths misunderstood Mr. Wade, or heard what they wanted to hear rather than what Mr. Wade said. Mr. Ashworth claims he told Mr. Wade about being able to collect from the Fund before he wrote the settlement check of \$1000 to remove the lien from his home.

The first assessment was made in April or May of 1995. If the licensee paid the assessment before July 31, 1995, he would be covered by the Fund from January 1, 1995. Mr. Ashworth said that Terry Wade told him there was no such fund. Additionally, the contractor hired by Mr. Ashworth has never paid the \$195 assessment.

During our conversation, Mr. Ashworth made many references to Mr. Wade's religious affiliation and the church positions he holds. He told me that he did not know how Mr. Wade could be a good LDS stake president and still treat Mr. Ashworth the way he has.

He implied that Mr. Wade was not worthy to hold the positions he does in the Church. He represented to me that Terry Wade is a man of questionable ethics.

I had told Mr. Ashworth that I would contact the attorney and explain the program requirements before I knew the attorney he meant was Mr. Wade. I also informed Mr. Ashworth that the filing deadlines for the claim had passed several years ago, and that the program would not be able to help. The filing dates are statutory and therefore, cannot be changed. I contacted Mr. Wade for an explanation. Mr. Wade explained that he has been contacted several times by Mr. Ashworth, and that Mr. Ashworth has made derogatory remarks about Mr. Wade's personal life and Church callings. Mr. Wade apologized for making me a part of this problem. He indicated that he thought the problem had been resolved.

A few days later, Mr. Ashworth called and asked if I had told the attorney to refund his money. I explained that I could not do that. However, I did tell him that I had spoken with Mr. Wade. I explained that any action would have to be on a personal basis between Mr. Wade and Mr. Ashworth. Although Mr. Ashworth was upset, he thanked me and again said that Mr. Wade could not be a "good Church member and still cheat me out of this money."

About a week later, Mr. Ashcroft contacted me. He told me that he had just finished reading a book by President Spencer W. Kimball of the LDS Church, and because of President Kimball's teachings had decided to let the matter rest. He indicated that his God and he knew that he was entitled to the money, but that it was not worth the hassle. Besides, as an active Mormon, he needed to turn the other cheek.

Mr. Ashworth has not contacted me again. Mr. and Mrs. Ashworth live on a fixed income and a refund of the money would be nice. It seems to me that Mr. Ashworth has a personal vendetta against Terry Wade, and nothing will satisfy him.

On February 24, 2000, we received a letter from Mr. Ashworth reasserting all of his prior claims. Enclosed with the letter were documents showing Mr. Ashworth was probably entitled to protection under the Act. However, the letter is the first (and only) written documentation that the Program has received from Mr. Ashworth.

I left a message for Terry Wade on February 28, 2000, asking that he give us a general outline of his conversations so that we would have knowledge of the situation before we reply to Mr. Ashworth. Mr. Wade left a voice mail message for me indicating that he would be glad to provide something.

**Minutes from Board Meeting Discussion
Claim LRF-2000-XXXX-XX**

May 24, 2000

Mr. Techmeyer recused himself from this claim. J & J Mill and Lumber is a subsidiary of Sunroc which is part of the Clyde Companies which also owns Geneva Rock Products. There is not a quorum present, and any discussion would be for informational purpose only. Mr. Webster explained that Mr. Ashworth will be joining the discussion by telephone from his home in Ivins. Mr. Patterson felt it was inappropriate for the Board to discuss anything before calling Mr. Ashworth. He also questioned whether it was appropriate to proceed without a quorum present. Mr. Webster explained the Mr. Ashworth was expecting the call today. Mr. Hunt suggested a waiver from Mr. Ashworth that he would accept a decision without a quorum present. Director Bowen explained to the board that he wanted the discussion and a vote from the board before making a decision. He also indicated that he wanted it handled in the most legally correct manner. Chairman Techmeyer indicated that he had recused himself for this reason—although he is not involved with J & J, he wants to avoid an appearance of wrongdoing. Mr. Burton then disclosed that he works with Attorney Terry Wade (named by Mr. Ashworth as the non-paying party). Because the conference room telephone jack was not working, Director Bowen, Mr. Webster, and Mr. Patterson discussed the problem with Mr. Ashworth in Director Bowen's office. Returning to the meeting, they indicated that Mr. Ashworth agreed to continue this matter until the June meeting. Mr. Burton indicated that he thought a time period for the discussion should be established before the next meeting. Half an hour was mentioned.

June 27, 2000

Mr. Ashworth is waiting for a call from the board this morning.

Discussion before the call was made included disclosures to be made to Mr. Ashworth. Although Chairman Techmeyer recused himself when the claim was previously reviewed, he will not this time. With Chairman Techmeyer there will not be a quorum present. Mr. Hunt felt that there would not be a conflict of interest. Additionally, the board felt that it would be advisable to notify Mr. Ashworth of the board decision by letter rather than on the telephone. Mr. Burton indicated that he had looked at the claim from the point of view that everything Mr. Ashworth had indicated was the truth and that Mr. Wade (the attorney for J & J Mill & Lumber) was wrong. He still felt that there was no legal way that Mr. Ashworth could be paid from the fund. Reasons include the length of time since the problem, the fact that homeowners cannot collect, and that the correct documentation was not present. Mr. Hunt indicated that he had looked at the claim the same way and could not find a justifiable way to pay the Ashworths from the fund. Mr. Bankhead also agreed with both Mr. Hunt and Mr. Burton. Mr. Techmeyer indicated that fund has no legal right to pay the claim and is fearful that the board would be breaking the law by authorizing payment. Mr. Webster indicated that Director Bowen recognizes that the homeowner cannot collect from the fund. He also indicated to Mr. Webster that he wanted Mr. Ashworth to have a fair hearing.

During the telephone conversation, Mr. Techmeyer asked Mr. Ashworth if he had additional information for the board. He indicated the board members had reviewed all the information.

Chairman Techmeyer indicated that at the conclusion of the phone call, the board would adjourn to an executive session and the opinion would be mailed to Mr. Ashworth in a few days. Mr. Weller moved to adjourn hearing to meet in an executive session. All approved. The telephone call to Mr. Ashworth was terminated after Mr. Techmeyer thanked him and explained that an Order would be forthcoming.

Mr. Hunt advised that the meeting should be adjourned to begin the executive session.



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June 27, 2000

ALBERT ASHWORTH
36 E 675 S
IVINS UT 84738-6252

Subject: Lien Recovery Fund Advisory Board Claim Decision
Lien Recovery Fund Claim No. LRF-2000-XXXX-XX
Claimant: Albert Ashworth
Original Contractor: Randy Larson Masonry Contractors
Non-paying Party: J & J Mill and Lumber Supply/Terry Wade, Esq.
Homeowner: Albert Ashworth

Dear Mr. Ashworth:

This letter is to inform you of the Utah Residence Lien Recovery Fund Advisory Board's decision regarding your claim for payment.

Claim Proceedings

On June 27, 2000 the Board considered the claim of Albert Ashworth v. J & J Mill and Lumber Supply/Terry Wade (claim no. LRF-2000-XXXX-XX). The claimant has not been precluded from civil action against the nonpaying parties, therefore the claim was treated as informal pursuant to Utah Administrative Code §§ R156-46b-202(1)(j) and R156-46b-201(1)(e).

Present during the proceeding were the following individuals:

- Clint Techmeyer, Board Chair
- Grant Weller, Board Member
- Bob Burton, Board Member
- Steve Bankhead, Board Member
- W. Earl Webster, LRF Program Coordinator
- Tony Patterson, Assistant Attorney General
- Jeff Hunt, Assistant Attorney General
- Chris Keddington, LRF Claims Examiner
- Kathie Schwab, LRF Program Secretary
- Craig Cottle, DOPL Bureau 4 Manager

Mr. Ashworth attended the proceeding by conference telephone call.

The proceeding commenced with Mr. Techmeyer identifying all of the parties in attendance so Mr. Ashworth would know who was present. Mr. Techmeyer then explained that his employer, Geneva Rock Products, Inc., is distantly affiliated with J & J Mill and Lumber Supply and offered to recuse himself from the proceeding. Mr. Ashworth verbally agreed Mr. Techmeyer need not recuse himself from the proceeding.

Mr. Techmeyer explained to Mr. Ashworth that the Board members had been provided with copies of all the letters sent by Mr. Ashworth to Kathie Schwab, Earl Webster, and Gary Bowen. Mr. Techmeyer then asked whether Mr. Ashworth wanted to provide the Board any new or additional information. Mr. Ashworth said he did not.

Mr. Burton explained he had familiarized himself with the documents provided by Mr. Ashworth and was willing to assume all of the information contained therein is true. Based on that understanding, Mr. Burton recommended the Board expedite the process by considering the claim in executive session. Mr. Ashworth agreed. Mr. Burton moved to consider the claim in executive session; Mr. Weller seconded that motion. The motion passed by unanimous vote.

Mr. Techmeyer thank Mr. Ashworth for his time and the phone call was terminated.

Executive Session

Upon completion of remaining Board business, the executive session to consider this claim commenced. Present were the following individuals:

- Clint Techmeyer, Board Chair
- Grant Weller, Board Member
- Bob Burton, Board Member
- Steve Bankhead, Board Member
- Jeff Hunt, Assistant Attorney General

Mr. Burton moved to accept as true all of Mr. Ashworth's assertions. Included in the same motion, Mr. Burton moved to deny Mr. Ashworth's claim based on those assertions. Mr. Burton cited three reasons for denial:

1. Mr. Ashworth does not meet the definition of a "qualified beneficiary" as set forth in Utah Code Ann. § 38-11-102(15) in that he has not registered with the Fund nor did he provide qualified services to the original contractor. Therefore, the claim fails to meet Utah Code Ann. § 38-11-203(1)(a), which requires a claimant to be a qualified beneficiary "during the construction on [the incident] residence."
2. All qualified services by all parties to the contract in question were completed on or before September 7, 1995. To date, Mr. Ashworth has not filed civil action against the alleged nonpaying parties. Therefore, Mr. Ashworth did not file the required civil

action within 180 days of the last date he provided qualified services. The claim is beyond the jurisdiction of the Division and the Board because the requirements of Utah Code Ann. § 38-11-204(3)(c)(i) have not been met.

3. This matter has already been settled by stipulation between Mr. Ashworth and Mr. Wade. The Fund is not the appropriate forum for rehearing a previously settled dispute. Therefore, consideration of the claim is outside the jurisdiction of Board and the Division.

Mr. Weller seconded Mr. Burton's motion. The motion passed unanimously. Mr. Bankhead then moved to have Earl Webster prepare a letter to Mr. Ashworth setting forth the Board's decision. Mr. Burton seconded Mr. Bankhead's motion. The motion passed unanimously.

Summary

In summation, while the members of the Board and the employees of the Division all appreciate the unique and unfortunate nature of Mr. Ashworth's situation, the facts clearly demonstrate that the claim lies well outside the requirements established by the Lien Recovery Act. Therefore, the claim is denied.

Appeal Rights

Because this claim has been classified as an informal proceeding, you may challenge the denial of the claim by filing a "Request for Agency Review." Please see the attached letter from Michael Medley regarding how to file the appeal.

Respectfully,



W. Earl Webster, CPA
Lien Recovery Fund Program Coordinator
Phone: (801) 530-7632
Fax: (801) 530-6511
Email: ewebster@br.state.ut.us

cc: Gary Bowen, Director Utah Division of Occupational and Professional Licensing
Clint Techmeyer, Chair Utah Residence Lien Recovery Fund Advisory Board
Bob Burton, Member Utah Residence Lien Recovery Fund Advisory Board
Grant Weller, Member Utah Residence Lien Recovery Fund
Steve Bankhead, Member Utah Residence Lien Recovery Fund
Bob Jensen, Member Utah Residence Lien Recovery Fund
Tony Patterson, Assistant Attorney General